Mad. G. P.—88,050—16-10-29.

# MADRAS RECORD OFFICE.

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## Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1148 Press Mis.

584-585

Dated 28th April 1869

***Not to be folded or roughly handled***

*Proceedings of the Madras Government, Revenue Department,*
*28th April* 1869.

No. 584. Read the following letter from the Secretary to the Council of the Governor-General for making Laws and Regulations, to the Secretary to the Government of Fort Saint George, dated Fort William, 24th March 1869, No. 92 :—

In continuation of the letter to your address from Mr. Howell, Officiating Secretary to the Government of India, Home Department, No. 434, dated 30th October 1868, I am directed to transmit the accompanying copy of Instructions for counsel and the opinion of the Attorney and Solicitor-General to the Crown, the Queen's Advocate, and Mr. Forsyth, on the subject of the validity of the Inam Title Deeds issued at Madras.

2. It will be seen that that opinion sustains the objection to the Title Deeds in question raised by the Honorable Mr. Norton. The Secretary of State proposes, therefore, to apply to Parliament for a Declaratory Act, legalising the previous proceedings of the Madras Government on the subject, which course will render it unnecessary to withdraw the Title Deeds already issued.

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INSTRUCTIONS

*On behalf of the Secretary of State for India in Council.*

You are requested to peruse the accompanying Despatch from the Government in India, and its enclosures, relative to the validity of certain Inam Title Deeds, issued in the Presidency of Madras, which it will be seen is called in question by Mr. Norton, the Advocate-General of that Presidency, with reference to which your opinion is now requested.

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OPINION.

We are of opinion that the objection taken by the Advocate-General of Madras is well-founded. The Preamble of 21 and 23 Vic. Cap. 41, after reciting that "it has been considered that the "local Governments in India cannot execute such contracts and assurances in India on behalf "of the Secretary of State in Council, as before the commencement of the said Act (21 and 22 "Vic. Cap. 106) they were respectively competent to enter into and execute on behalf of the East "India Company, and that doubts had arisen as to the proper mode of execution of contracts entered into by the Secretary of State in Council, proceeds to pass a remedial and enabling measure. Power to execute contracts, assurances, etc., is vested in the various local Government Officers and by Section 1, and the mode in which they are to exercise such powers is defined by Section 2. The question does not seem to us to be exactly whether "May" is permissive or obligatory. "May in Section 2 is an *enabling* word, and points out the means by which and by which alone the enabling operation, stated by the Preamble to be desirable, can be effected. The statutory enactment is based on the assumption that unless the permission given be used, the validity desired will not be attained. As the conditions imposed by Section 2 have not been fulfilled, the Title Deeds in question derive no validity under the Act.

2. It might be contended that the opinion stated in the Preamble was ill-founded. But we think the plain language of 21 and 22 Vic. Cap. 106, Sections 39 and 40, shows that it was well-founded. We are, therefore, of opinion that the Title Deeds as executed are invalid.

(Signed) R. P. COLLIER,
( ,, ) J. D. COLERIDGE,
( ,, ) TRAVERS TWISS,
( ,, ) WILLIAM FORSYTH.

Temple,
*6th January* 1869.

submitted

*Proceedings of the Madras Government, Revenue Department,*
*28th April* 1869.

No. 585. ORDER THEREON, 28th April 1869, No. 1,148.

Land Revenue.

COMMUNICATED to the Officiating Inam Commissioner and to the Advocate-General, with advertence to the Proceedings of Government, under date 11th November 1868, No. 2,829.

2. Mr. Blair should at once place himself in communication with the Advocate-General and the Government Solicitor, in order to the preparation of an amended form of Title Deed, which, when settled, should be submitted for the approval of Government.

3. The Government of India will also be addressed in view to the Inam Title Bill being proceeded with, as the English enactment is apparently intended to deal only with those errors in the form of Title Deed, which were recently pointed out by the Advocate-General.

4. As the decision of the Home Government will probably render it feasible to discontinue the Inam Commission, as a separate department, at the end of the present official year, the Board of Revenue will be requested to place themselves in early communication with the Inam Commissioner on the subject, and will report the result to Government, stating the character and the quantity of work which still remains to be done, and the amount likely to be completed during the present official year.

(True Extract.)

(Signed) R. A. DALYELL,
*Acting Secretary to Government.*

To the Officiating Inam Commissioner.
,, the Advocate-General.
,, the Government Solicitor.
,, the Board of Revenue.
,, the Legislative Department.

Exd. F. R. Bantleman.

submitted

Revenue Depart.

No. 1148.

Proceedings of the Madras Govt
under date the 28th April 1869

Read the following letter
from the Secy to the Council
of the Govr Genl for making
Laws & Regulations.

Forwarding copy of
opinion of the Attorney & Solicitor
Genl to the Crown on the
subject of the validity of
the Inam Title Deeds issued
at Madras

(W. 826 March 1869 No 92)

1. Communicated to the
Offg Inam Commissioner
& to the Advocate Genl
with reference to the Proc.
of Govt under date 11 Novr
1868 No 2829.

2. Mr Blair should
at once place himself in
communication with the Ad-
vocate Genl & the Govt
Solicitor in order to the
preparation of an amended
form of Title Deed which
when settled should be
submitted

submitted for the approval of Govt.

3. The Govt. of India will also be addressed in view to the Inam Title Bill being proceeded with, as the English Enactment is apparently intended to deal only with those errors in the form of Title Deed which were re-=cently pointed out by the Advocate Genl.

4. As the decision of the Home Govt will probably render it feasible to dis-=continue the Inam Com-=mission, as a separate Dept, at the end of the present Offl Year, the Bd of Revr will be requested to place them-=selves in early communication with the Inam Commissioner on the subject, & will report the result to Govt, stating the character and the ~~whole~~ amount of work

work which still remains to be done, & the quantity likely to be completed during the present Offl year. It is observed that no progress report of work performed has been received from the Inam Commissioner since March 1868, & he will accordingly be requested at once to submit one of the description referred to in para 9 of the G. O. under date the 9th Jany 1866 No 139 for the past Offl year, & to submit similar statements for each month in future.

RD

8 Copies to Inam Commr Desp No 29
6 Copy — Advocate Genl ✓
4 — Govt Solicitor ✓
14 — Board of Rev ✓
8 — Legislative Dept ✓

50